

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

v.

**Criminal Action No. 3:21-CR-49
(GROH)**

**JONATHAN TOEBBE and
DIANA TOEBBE,**

Defendants.

**UNITED STATES' UNOPPOSED MOTION FOR PROTECTIVE ORDER
PURSUANT TO § 3 OF THE CLASSIFIED INFORMATION PROCEDURES ACT**

The United States of America and William J. Ihlenfeld, II, United States Attorney for the Northern District of West Virginia, by Jarod J. Douglas, Assistant United States Attorney for said District, Jessica Lieber Smolar, Special Assistant United States Attorney for said District, and S. Derek Shugert and Matthew J. McKenzie, Trial Attorneys, U.S. Department of Justice, National Security Division, respectfully moves for the entry of the attached Protective Order Pertaining to Classified Information. In support of its motion, the United States avers as follows.

1. On October 19, 2021, a Federal Grand Jury in Elkins, West Virginia, returned the instant Indictment [Doc. 37], charging violations of the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*, relating to the communication of Restricted Data, a form of classified information.

2. Restricted Data and other classified materials, including but not limited to documents the defendants are charged with conspiring to communicate, were collected as part of the investigation and will be subject to procedures outlined in the Classified Information Procedures Act, 18 U.S.C. App. III (CIPA), as well as other rules, statutes, and case law.

3. CIPA's definition of classified information expressly includes "restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))." 18

U.S.C. App. III § 1. Section 3 of CIPA provides that the court shall issue an order, upon the request of the United States, “to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case.” In contrast to the discretionary authority in Rule 16(d)(1), Section 3 of CIPA provides that, when classified information is involved, protective orders are to be issued whenever the government discloses classified information to a defendant in connection with a prosecution. *See* H.R. Rep. No. 96-831, part 1, at 26 (1980).

4. On October 21, 2021, the Court appointed Harry J. Rucker to serve as the Classified Information Security Officer (“CISO”) for this matter. Doc. 59. This motion and attached Protective Order Pertaining to Classified Information has been reviewed by the CISO.

5. The undersigned has consulted with defense counsel, who consent to the entry of the attached Protective Order.

WHEREFORE, the United States respectfully requests that the Court enter the attached protective order.

Respectfully submitted,

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

By: /s/
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/s/
S. Derek Shugert and Matthew J. McKenzie
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United States Department of Justice

CERTIFICATE OF SERVICE

I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that on the 4th day of November 2021, the foregoing UNITED STATES' UNOPPOSED MOTION FOR PROTECTIVE ORDER PURSUANT TO § 3 OF THE CLASSIFIED INFORMATION PROCEDURES ACT, including Exhibit No. 1, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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By: /s/ Jarod J. Douglas
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